

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)

Petition for Waiver of Universal Service High-Cost
Filing Deadlines)

WC Docket No. 08-71

Federal-State Joint Board on Universal Service)

CC Docket No. 96-45

Centennial USVI Operations Corp. Petition for Waiver
of Section 54.314(d)(1) of the Commission's Rules)

ORDER

Adopted: April 21, 2009

Released: April 21, 2009

By the Acting Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we deny a request from Centennial USVI Operations Corp. (Centennial) for a waiver of sections 54.307(d) and 54.314(d) of the Commission's rules.¹ For the reasons discussed below, however, we find that Centennial has met all the necessary requirements to allow it to receive high-cost universal service support as of the date of the order designating it as an eligible telecommunications carrier (ETC) in the U.S. Virgin Islands (USVI).

II. BACKGROUND

2. Section 254(e) of the Communications Act of 1934, as amended (the Act), provides that "only an eligible telecommunications carrier [(ETC)] designated under section 214(e) shall be eligible to receive specific Federal universal service support."² Support shall be used "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."³ To implement this statutory requirement, the Commission has adopted various certification and data filing requirements.⁴

¹ Centennial USVI Operations Corp. Petition for Waiver of Section 54.314(d)(1) of the Commission's Rules, CC Docket No. 96-45 (filed Feb. 28, 2008) (Centennial Petition); Letter from William L. Roughton, Jr., Attorney for Centennial, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45 (filed Mar. 10, 2008) (Centennial March 10 *Ex Parte* Letter); Letter from William L. Roughton, Jr., Attorney for Centennial, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45 (filed Mar. 26, 2008) (Centennial March 26 *Ex Parte* Letter); 47 C.F.R. §§ 54.307(d), 54.314(d).

² 47 U.S.C. § 254(e).

³ *Id.*

⁴ *See, e.g.*, 47 C.F.R. §§ 54.307 (competitive ETC line count filing requirements), 54.313 (certification requirements regarding use of high-cost support by non-rural carriers), 54.314 (certification requirements regarding the use of high-cost support by rural carriers), 54.802(a) (ETC line count filing requirements for Interstate Access Support (IAS)), 54.809 (certification requirements regarding the use of IAS), 54.903 (data filing requirements for Interstate Common Line Support (ICLS)), 54.904 (certification requirements regarding the use of ICLS).

3. Pursuant to section 54.307 of the Commission's rules, a competitive ETC must file with the Universal Service Administrative Company (USAC) working line count data according to the following schedule:

- (1) No later than July 31st of each year, submit data as of December 31st of the previous calendar year;
- (2) No later than September 30th of each year, submit data as of March 31st of the existing calendar year;
- (3) No later than December 30th of each year, submit data as of June 30th of the existing calendar year; and
- (4) No later than March 30th of each year, submit data as of September 30th of the previous calendar year;

in order to receive high-cost support for those quarterly periods.⁵

4. For rural carriers, pursuant to section 54.314 of the Commission's rules, state commissions must file an annual certification with USAC and the Commission stating that all high-cost support received by carriers within the state will be used "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."⁶ In instances in which carriers are not subject to the jurisdiction of a state, the Commission allows an ETC to certify directly to the Commission and USAC that federal high-cost support will be used in a manner consistent with section 254(e) of the Act.⁷ Section 54.314(d) of the Commission's rules provide that the certification must be filed by October 1 of the preceding calendar year to receive support beginning in the first quarter of a subsequent calendar year. If the October 1 deadline for first quarter support is missed, the certification must be filed by January 1 for support to begin in the second quarter, by April 1 for support to begin in the third quarter, and by July 1 for support to begin in the fourth quarter.⁸

5. To receive interstate common line support (ICLS) pursuant to section 54.904 of the Commission's rules, an ETC must file a certification stating that all ICLS received by it will be used only for the provision, maintenance, and upgrading of facilities and services for which such support is intended.⁹ This certification must be filed with USAC and the Commission on the date that the ETC first files its line count information, and, thereafter, on June 30 of each year.¹⁰

⁵ 47 C.F.R. § 54.307(c).

⁶ 47 C.F.R. § 54.314(a).

⁷ See 47 C.F.R. § 54.314(b); see also *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244, 11318, para. 189 (2001).

⁸ 47 C.F.R. § 54.314(d).

⁹ 47 C.F.R. § 54.904(a).

¹⁰ See 47 C.F.R. §§ 54.904(a) and (d). In the *MAG Order*, the Commission adopted a mechanism for accepting an untimely filed ICLS certification, whereby the carrier does not become eligible for ICLS until the second calendar quarter after the certification is untimely filed. See *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers; Federal-State Joint Board on Universal Service; Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation; Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange*

6. In 2005, the Commission concluded that “in order to provide universal service support to newly-designated ETCs on a timely basis, ETCs shall be eligible for support as of their ETC designation date, provided that the required certifications and line-count data are filed within 60 days of the carrier’s ETC designation date.”¹¹ Under section 54.307(d) of the Commission’s rules, newly-designated ETCs have 60 days from the date of their designation to file line count data.¹² Under section 54.314(d) of the Commission’s rules, certifications must be filed on behalf of newly-designated ETCs by the relevant state commission or by the newly-designated ETC within 60 days of the ETC designation date.¹³ Under section 54.904 of the Commission’s rules, to receive ICLS, an ETC must file the required self-certification on the date it first files line count data, and annually on June 30th thereafter.¹⁴ If the required line count data or certifications are not filed within 60 days of an ETC’s designation date, the ETC will not receive support retroactively to its ETC designation date.¹⁵ Instead, the ETC will receive support on a going-forward basis pursuant to the date the line count data or certifications were filed.¹⁶

7. *Centennial’s Petition for Waiver*. On April 29, 2005, Centennial, a commercial mobile radio service (CMRS) provider, filed a petition with the Commission, seeking ETC designation in the United States Virgin Islands (USVI).¹⁷ In that petition, Centennial included a letter from the USVI Public Services Commission (PSC) in which the USVI PSC stated that it did not have jurisdiction over Centennial for purposes of designating Centennial as an ETC under section 214 of the Act.¹⁸ In December 2007, the USVI legislature amended its statute to allow the USVI PSC to grant requests for ETC designation by CMRS providers.¹⁹ On February 12, 2008, Centennial withdrew its ETC designation petition filed with the Commission.²⁰ On February 26, 2008, the USVI PSC released an order designating Centennial as an ETC in the USVI.²¹ The USVI PSC retroactively set the effective date of Centennial’s ETC designation to December 2, 2006, the date Centennial submitted its ETC designation petition to the USVI PSC.²² On February 28, 2008, Centennial requested a waiver of the certification filing deadlines required by section 54.314(d)(1) of the Commission’s rules.²³ Centennial also requested waiver of the

Carriers; Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd 19613, 19688, para. 176 (2001) (*MAG Order*) (subsequent history omitted).

¹¹ See *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 20 FCC Rcd 6371, 6411 (2005) (*ETC Designation Order*).

¹² See 47 C.F.R. § 54.307(d).

¹³ See 37 C.F.R. § 54.314(d)(6); see also *ETC Designation Order*, 20 FCC Rcd at 6411, para. 92.

¹⁴ See 47 C.F.R. § 54.904(d).

¹⁵ *ETC Designation Order*, 20 FCC Rcd at 6411, para. 92.

¹⁶ *Id.*

¹⁷ Centennial USVI Operations Corp. Petition for Designation as an Eligible Telecommunications Carrier in the United States Virgin Islands, CC Docket No. 96-45 (filed Apr. 29, 2005) (Centennial USVI FCC ETC Petition).

¹⁸ *Id.* at 5, Attach. (Letter from Valencio Jackson, Chairman, Virgin Islands Public Service Commission, to Kevin Martin, Chairman, Federal Communications Commission (dated Apr. 19, 2005)).

¹⁹ Act No. 6977, Bill No. 27-0099, Twenty-Seventh Legislature of the Virgin Islands. Sec. 19 (to be codified at V.I. Code Ann. tit. 30, § 47 (2007)).

²⁰ Letter from Christopher W. Savage, Counsel for Centennial USVI Operations Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45 (filed Feb. 12, 2008).

²¹ *ETC Petition Centennial U.S.V.I. Operations Corporation Pursuant to Act No. 6977*, PSC Docket No. 574, Order No. 32.2008 (USVI PSC, dated Feb. 26, 2008).

²² *Id.* at 2.

²³ Centennial Petition at 1; Centennial March 26 *Ex Parte* Letter.

line count data filing deadlines required by section 54.307 of the Commission's rules.²⁴ Centennial claims it did not file the required line count data that "form the basis of calculating USF support for the first and second quarters of 2007."²⁵ Centennial filed line count information in March 2007, and the USVI PSC did not file the certification required by section 54.314 of the Commission's rules until February 26, 2008.²⁶ Centennial argues that the Commission should grant is waiver because the certification deadlines occurred prior to the effective date of its ETC designation.²⁷ Centennial asserts that the Commission has granted waiver requests of other ETCs under similar circumstances.²⁸ Centennial also asserts that granting its waiver request will enable it to provide needed telecommunications services to the residents of the USVI and further the goal of competitive neutrality.²⁹

A. DISCUSSION

8. We find that Centennial has failed to demonstrate that there is good cause to waive sections 54.307(d) and 54.314(d) of the Commission's rules.³⁰ Because USAC processes such a large amount of data each year, it is necessary that carriers meet the requisite filing deadlines, absent special circumstances.³¹ Carriers are responsible for reviewing and understanding the rules to ensure that submissions are filed in a timely manner.³²

9. In response to Centennial's argument that a waiver should be granted because the filing deadline occurred prior to its ETC designation date, we point out that the Commission has provided newly-designated ETCs with additional time to file their required certifications and data.³³ Accordingly, Centennial and the USVI PSC had until January 31, 2007 to file the required line-count data and

²⁴ Centennial March 10 *Ex Parte* Letter.

²⁵ *Id.* The filing deadlines that correspond to this period are September 30 and December 30, 2006. 47 C.F.R. § 54.307(c).

²⁶ Centennial Petition at 7.

²⁷ *Id.* at 9-10.

²⁸ *Id.* at 10 (citing *RFB Cellular Inc. Petitions for Waiver of Sections 54.314(d) and 54.307(c) of the Commission's Rules and Regulations*, CC Docket No. 96-45, Order, 17 FCC Rcd 24387 (Wireline Comp. Bur. 2002) (*RFB Order*); *Guam Cellular and Paging, Inc. Petition for Waiver of Section 54.314 of the Commission's Rules and Regulations*, CC Docket No. 96-45, Order, 18 FCC Rcd 7138 (Telecom. Access. Pol. Div. 2003) (*Guam Cellular Order*); *Western Wireless Corporation Petition for Waiver of Section 54.314 of the Commission's Rules and Regulations*, CC Docket No. 96-45, Order, 18 FCC Rcd 14689 (Telecom Access. Pol. Div. 2002) (*Western Wireless Order*)).

²⁹ Centennial Petition at 2-3, 10-11.

³⁰ Generally, the Commission's rules may be waived for good cause shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.

³¹ *Federal-State Joint Board on Universal Service, FiberNet, LLC, Petition for Waiver of Section 54.307(c) of the Commission's Rules and Regulations*, CC Docket No. 96-45, Order, 19 FCC Rcd 8202, 8204, para. 5 (Wireline Comp. Bur. 2004).

³² *Id.*

³³ See, e.g., 47 C.F.R. §§ 54.307(d), 54.314(d)(6).

certification.³⁴ In the cases cited by Centennial, waivers were granted because the Commission's rules did not, at that time, provide additional time in which newly-designated ETCs could file required information to enable them to receive support as of their designation dates.³⁵ The Commission adopted the rule allowing for a 60-day period in which filings could be made on behalf of newly-designated ETCs in 2005.³⁶ In doing so, the Commission found that the adoption of the 60-day period would "eliminate the need for carriers to seek waiver of filing deadline rules in order to receive support on a timely basis."³⁷ The Commission also found it necessary to "impose some time limits so that USAC can accurately calculate high-cost support payments."³⁸ Therefore, if the required information is not filed on behalf of a newly-designated ETC within 60 days of its designation date, the ETC will not receive support retroactively to that date. In this case, Centennial filed the required line count information on March 30, 2007, nearly 120 days after the ETC designation date. The USVI PSC certification was filed more than a year after the 60-day deadline date. Such lengthy delays between the filing of the necessary data and the dates for which Centennial seeks support curtails USAC's ability to accurately calculate high-cost support payments, and Centennial has not demonstrated good cause to waive the applicable deadlines. Accordingly, we deny Centennial's request for waiver of the Commission's rules.

10. We find, however, that although Centennial has not demonstrated good cause to allow it to receive high-cost support retroactively to December 2, 2006, for purposes of distributing federal high-cost universal service support, the effective date of Centennial's ETC designation in the USVI is February 26, 2008, the release date of the USVI PSC's order. Although the USVI PSC attempted to retroactively designate Centennial as an ETC in the USVI as of December 2, 2006, as discussed above, the USVI legislature did not authorize the PSC to designate CMRS providers as ETCs until December 2007.³⁹ Therefore, for purposes of providing federal high-cost support to Centennial in the USVI, we find that the release date of the PSC's order designating Centennial as an ETC, February 26, 2008, will be the effective date of that designation. All of the necessary line cost data and certifications have been filed on Centennial's behalf within 60 days of that date and no waivers of the Commission rules are required to allow Centennial to receive high-cost support in the USVI as of February 26, 2008. We direct USAC to provide all high-cost support for which Centennial is eligible in the USVI to Centennial retroactively to February 26, 2008, and to offset against this amount any high-cost support received by Centennial in the USVI for periods prior to that date.

11. We remind carriers and commissions that it is their responsibility to ensure that their filings are timely received in the appropriate places, regardless of the time and method of their filings. Filers now have many options by which to file, including U.S. Mail, other sources of commercial delivery, facsimile, and e-mail. For instance, any carrier receiving funding from the high-cost universal support mechanism may file timely via e-mail at hcfilings@HCLI.universalservice.org. Additional information regarding USAC's filing procedures and deadlines can be found at <http://www.usac.org/hc/tools/filing-tool/default.aspx>. We encourage filers to use any and all methods they deem necessary to ensure that their filings are timely received.

³⁴ 47 C.F.R. §§ 54.307(d), 54.314(d)(6) (providing that a carrier shall be eligible to receive support as of the effective date of its ETC designation as long as it files the required data and certifications within 60 days of the carrier's ETC designation date).

³⁵ See *ETC Designation Order*, 20 FCC Rcd at 6411, para. 92 (adopting the 60-day period for filings on behalf of newly-designated ETCs).

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ See *supra* para. 7.

III. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 214, and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that this order IS ADOPTED.

13. IT IS FURTHER ORDERED that the petition for waiver of sections 54.307(d) and 54.314(d) of the Commission's rules, 47 C.F.R. §§ 54.307(d), 54.314(d), filed by Centennial USVI Operations Corp., IS DENIED.

14. IT IS FURTHER ORDERED that USAC SHALL PROVIDE high-cost universal service support to Centennial USVI Operations Corp. as of February 26, 2008.

15. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. §§ 1.102(b)(1), this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Julie A. Veach
Acting Chief
Wireline Competition Bureau